

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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RACANELLI CONSTRUCTION CO., INC., :

Docket No.: 1:15-cv-04279-DLC

Plaintiff, :

VERIFIED ANSWER

- against - :

RACANELLI CONSTRUCTION GROUP INC., :
and RICHARD XIA, :

Defendants. :
-----X

Defendants, Racanelli Construction Group, Inc., (“RCG”) and Richard Xia (“Xia”), (hereinafter collectively referred to as “Defendants”), by and through their attorneys Michael J. Kapin, P.C., as and for a Verified Answer to Plaintiff’s Summons and Verified Complaint, dated April 28, 2015 (the “Complaint”), alleges as follows:

That without waiving any jurisdictional defenses – **GENERAL DENIAL.**

SPECIFIC RESPONSES

1. Deny possessing knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph “1” of the Complaint.

2. Deny possessing knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph “4” of the Complaint.

3. Deny possessing knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph “5” of the Complaint.

4. Deny possessing knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph “6” of the Complaint.

5. Deny the allegations contained in Paragraph “7” of the Complaint.

6. Deny the allegations contained in Paragraph "8" of the Complaint.
7. Deny the allegations contained in Paragraph "9" of the Complaint.
8. Deny the allegations contained in Paragraph "10" of the Complaint.
9. Deny the allegations contained in Paragraph "11" of the Complaint.
10. Deny possessing knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph "12" of the Complaint.
11. Deny the allegations contained in Paragraph "13" of the Complaint.
12. Admit the allegations contained in Paragraph "14" of the Complaint.
13. Deny the allegations in Paragraph "15" of the Complaint, except state that RCG is engaged in business of commercial general construction and construction management, in the city of New York, County of Queens.
14. Deny the allegations contained in Paragraph "16" of the Complaint.
15. As for a response to Paragraph "17", Defendants repeat and reallege their responses to Paragraphs 1-16 of the Complaint above as though fully set forth herein.
16. Deny possessing knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph "18" of the Complaint.
17. Deny the allegations contained in Paragraph "19" of the Complaint.
18. Deny the allegations contained in Paragraph "20" of the Complaint.
19. Deny the allegations contained in Paragraph "21" of the Complaint.
20. Deny the allegations contained in Paragraph "22" of the Complaint.
21. Deny the allegations contained in Paragraph "23" of the Complaint.
22. Deny the allegations contained in Paragraph "24" of the Complaint.

23. Deny possessing knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph "25" of the Complaint.

24. Deny the allegations contained in Paragraph "26" of the Complaint.

25. Deny the allegations contained in Paragraph "27" of the Complaint.

26. Deny the allegations contained in Paragraph "28" of the Complaint.

27. Deny the allegations contained in Paragraph "29" of the Complaint.

28. Deny the allegations contained in Paragraph "30" of the Complaint.

29. Deny the allegations contained in Paragraph "31" of the Complaint.

30. Deny the allegations contained in Paragraph "32" of the Complaint.

31. Deny possessing knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph "33" of the Complaint.

32. Deny the allegations contained in Paragraph "34" of the Complaint.

33. Deny the allegations contained in Paragraph "35" of the Complaint, except to the extent that the allegations state legal conclusions to which no response is required.

34. As for a response to Paragraph "36", Defendants repeat and reallege their responses to Paragraphs 1-35 of the Complaint above as though fully set forth herein.

35. Deny the allegations contained in Paragraph "37" of the Complaint.

36. Deny the allegations contained in Paragraph "38" of the Complaint, except to the extent that the allegations state legal conclusions to which no response is required.

37. Deny the allegations contained in Paragraph "39" of the Complaint, except to the extent that the allegations state legal conclusions to which no response is required.

38. Deny the allegations contained in Paragraph "40" of the Complaint.

39. Deny the allegations contained in Paragraph "41" of the Complaint, except to the extent that the allegations state legal conclusions to which no response is required.

40. As for a response to Paragraph "42", Defendants repeat and reallege their responses to Paragraphs 1-41 of the Complaint above as though fully set forth herein.

41. Deny the allegation that Plaintiff has a protected trade name, otherwise, deny possessing knowledge or information sufficient to form a belief as to the truth of the other allegations contained in Paragraph "43" of the Complaint.

42. Deny the allegations contained in Paragraph "44" of the Complaint.

43. Deny the allegations contained in Paragraph "45" of the Complaint.

44. Deny the allegations contained in Paragraph "46" of the Complaint.

45. Deny the allegations contained in Paragraph "47" of the Complaint.

46. Deny the allegations contained in Paragraph "48" of the Complaint.

47. Deny the allegations contained in Paragraph "49" of the Complaint.

48. Deny the allegations contained in Paragraph "50" of the Complaint.

49. Deny the allegations contained in Paragraph "51" of the Complaint.

50. Deny the allegations contained in Paragraph "52" of the Complaint, except to the extent that the allegations state legal conclusions, to which no response is required.

51. Deny the allegations contained in Paragraph "53" of the Complaint, except to the extent that the allegations state legal conclusions, to which no response is required.

52. Deny the allegations contained in Paragraph "54" of the Complaint, except to the extent that the allegations state legal conclusions, to which no response is required.

53. Deny the allegations contained in Paragraph "55" of the Complaint, except to the extent that the allegations state legal conclusions, to which no response is required.

54. As for a response to Paragraph "56", Defendants repeat and reallege their responses to Paragraphs 1-52 of the Complaint above as though fully set forth herein.

55. Deny possessing knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph "57" of the Complaint.

56. Deny the allegations contained in Paragraph "58" of the Complaint.

57. Deny the allegations contained in Paragraph "59" of the Complaint.

58. Deny the allegations contained in Paragraph "60" of the Complaint.

59. Deny possessing knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph "61" of the Complaint.

60. Deny the allegations contained in Paragraph "62" of the Complaint.

61. Deny the allegations contained in Paragraph "63" of the Complaint.

62. As for a response to Paragraph "64", Defendants repeat and reallege their responses to Paragraphs 1-63 of the Complaint above as though fully set forth herein.

63. Deny possessing knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph "65" of the Complaint.

64. Deny the allegations contained in Paragraph "66" of the Complaint, except to the extent that the allegations state legal conclusions, to which no response is required.

65. Deny the allegations contained in Paragraph "67" of the Complaint, except to the extent that the allegations state legal conclusions, to which no response is required.

66. As for a response to Paragraph "68", Defendants repeat and reallege their responses to Paragraphs 1-67 of the Complaint above as though fully set forth herein.

67. Deny the allegations contained in Paragraph "69" of the Complaint.

68. Deny the allegations contained in Paragraph "70" of the Complaint.

69. Deny the allegations contained in Paragraph "71" of the Complaint, except to the extent that the allegations state legal conclusions, to which no response is required.

70. Deny the allegations contained in Paragraph "72" of the Complaint.

71. As for a response to Paragraph "73", Defendants repeat and reallege their responses to Paragraphs 1-72 of the Complaint above as though fully set forth herein.

72. Deny the allegations contained in Paragraph "74" of the Complaint.

73. Deny the allegations contained in Paragraph "75" of the Complaint.

74. Deny the allegations contained in Paragraph "76" of the Complaint.

75. Deny the allegations contained in Paragraph "77" of the Complaint.

76. Defendants deny that Plaintiff is entitled to any of the relief requested in the WHEREFORE clause following Paragraph 77 and in all the paragraphs and sub-paragraphs that follow, or any relief whatsoever. Defendants ask the Court to dismiss the Complaint with prejudice for failure to state a claim upon which relief can be granted, and alternatively, for a judgment in its favor, and such other and further relief as the Court deems just and proper.

77. Each and every allegation in Plaintiff's Complaint that is not specifically admitted is hereby denied.

AFFIRMATIVE DEFENSES

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

78. Plaintiff's causes of action may be barred by the statute of limitations.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

79. Plaintiff's causes of action are barred by the doctrine of laches.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

80. Plaintiff's causes of action are barred by the doctrine of unclean hands.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

81. Plaintiff's causes of action are barred by the doctrine of equitable estoppel.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

82. Plaintiff's claims fail to state a cause of action.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

83. Plaintiff failed to mitigate its own damages.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

84. Plaintiff's claims are barred by the doctrine of fair use.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

85. Plaintiff's Complaint fails to allege any facts sufficient to support its claims.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

86. Plaintiff's claims for trademark infringement are duplicative of its first claim: Infringement of Plaintiffs' Protected Trade Name and Mark in Violation of §43(a) of the Lanham Act.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

87. Plaintiff has failed to allege any facts against individual Defendant Richard Xia supporting a piercing of the corporate veil against him.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

88. Plaintiff has failed to enforce its alleged mark over a period of time and is therefore precluded.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

89. Plaintiff's supposed mark is not distinctive.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

90. Plaintiff's mark, if any, has weakened to the point that Plaintiff is entitled to no protection over same.

AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE

91. Plaintiff has not registered its mark.

AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE

92. Plaintiff's causes of action are bared by the doctrine of Waiver and/or Acquiescence.

AS AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE

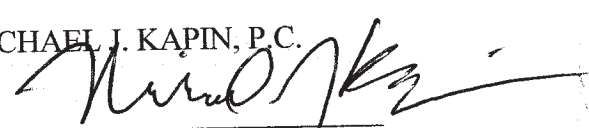
93. Plaintiff's causes of action are bared by the doctrine of Justification.

WHEREFORE, Defendants, Racanelli Construction Group, Inc. and Richard Xia, demand judgment in their favor and against Plaintiff Racanelli Construction Co., Inc.; along with reimbursement of Defendants' attorneys' fees and costs of court; and, such other, further and different relief as this Court may deem just and proper.

Dated: June 10, 2015
New York, New York

Yours, etc.

MICHAEL J. KAPIN, P.C.


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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RACANELLI CONSTRUCTION CO., INC.,

Plaintiff,

- against -

RACANELLI CONSTRUCTION GROUP, INC.
and RICHARD XIA,

Defendants.

VERIFICATION

Case No.: 15 CV 04249

STATE OF NEW YORK)
)ss.:
COUNTY OF QUEENS)

RICHARD Y. XIA, duly sworn, deposes and says to be true and correct, under the penalties of perjury, under the laws of the United States of America, the following:

I am an individual Defendant and the President of Defendant Racanelli Construction Group, Inc. in the within action, and have read the foregoing Verified Answer, and know the contents thereof. The allegations contained therein are true to the best of my own knowledge, except as to those matters therein stated to be alleged upon information and belief, and as to those matters, I believe them to be true.


RICHARD Y. XIA

Sworn to before me this
10th day of June, 2015


Notary Public

LIEN VUONG
Notary Public - State of New York
No. 01VU6210439
Qualified in Queens County
My Commission Expires August 17, 2017